LAND ASSESSMENT LAW NOT INVALID

Judge Ingram's Opinion Handed Down in Case of Whitlock Against Hawkins.

CURATIVE ACT MADE IT GOOD

Temporary Victory for Commonwealth; Case Now Goes to Court of Appeals.

In the Law and Equity Court yesterday Judge John H. Ingram handed down a decision in the suit of Charles E. Whitlock against O. A. Hawkins, commissioner of the revenue of the city of Richmond.

This decision is the result, as far as it goes, of litigation attacking the validity of the recent land assessments throughout the Commonwealth.

As will be seen, the decision, given below in full, is against the complainants, but inasmuch as the case will go to the Supreme Court of Appeals, where it will come up at the special term of that court, to be commenced April 10th, the end is not yet. A final decision against the assessment law would throw the financial affairs of the Commonwealth into a mild state of confusion. A decision sustaining Judge Ingram's opinion, however, would straighten out a tangled web by removing all doubt as to assessments. In any event, it is very necessary that the matter should be settled one way or the other at an early date, and for this reason the Supreme Court of Appeals will hold the special session beginning on the 10th.

Opinion of Judge Ingram.

The opinion of Judge Ingram follows:

Judge of the Law and Equity Court of the city of Richmond in the suit of Charles E. Whitlock and others vs. O. A. Hawkins, Commissioner of the Revenue of the city of Richmond.

I have decided to refuse the injunction prayed for in this case and to enter an order dismissing the bill, the case coming on to be heard upon the bill of the complaints, with the exhibits thereto annexed, and the answer of O. A. Hawkins, Commissioner of the Revenue of the city of Richmond.

The complaints make the point that the act of December 10, 1903, entitled: "An act to amend and re-enact Chapter 23 of the Code of Virginia in relation to the assesment of lands and lots," which is claimed to have been passed in obedience to the mandate of section 171 of the Constitution of Virginia, which provides that "the General Assembly shall provide for the re-assessment of real estate for the year 1906, and every fifth year thereafter, except that of railway and canal corporations, which, after January 1, 1913, may be assessed as the General Assembly may provide," is null and void and that no part thereof has the force of a law, and that all assessments and all other acts of every kind which have been made or done in compliance with the provisions thereof are null and void and of no effect, for the reason that said act was not passed as required by section 50 of the Constitution of Virginia, the grounds for the invalidity of said act being that the act undertook to make continuous or to revive an appropriation of public money or undertook to impose, continue or revive the taxes, and that section 50 of the Constitution of Virginia provides that "no bill which makes continuous or revives an appropriation of public or trust money or which imposes, continues or revives a tax, shall be passed except by the affirmative vote of a majority of all the members elected to each house (of the General Assembly), the vote to be by the yeas and nays, and the names of the members voting for and against, entered on the journal;" and that the journal of the Senate for the years 1902-3-4, shows that the said act only received 19 votes when it was attempted to be passed by the Senate, and further alleging that a majority of all the members elected to the Senate did not vote in favor of the passage of said act.

A copy of the Senate journal is filed with the bill, and the correctness of the vote therein stated is admitted by the answer and not denied; and it is further contended that the curative act, approved March 17, 1906, a copy of which is filed with the answer in this case, does not cure any proceedings or action had under the act of December 10, 1903, for the reason that the said act of December 10, 1903, did not receive the number of votes constitutionally required, and that all the proceedings thereunder were consequently void, and that, therefore, the curative act could not validate the assessment or proceedings had thereunder.

Concession for Arguments' Sake.

I shall not discuss the question of the invalidity of the act of December 10, 1903, but for the sake of argument will concede that act to be invalid, because it did not receive the constitutional vote required. In passing I will say, however, that the case of Lambert vs. Smith, reported in 98 Va. 268, in which the Supreme Court of Appeals of Virginia, as it was an application for a writ of habeas corpus, did not file an opinion, does not construe an act in all respects similar to the act of December 10, 1903, but, as I have before stated, for the sake of the argument, conceding for the purposes of my decision the invalidity of the act just above quoted, I come to the real question in this case, in my opinion, as to the effect of the curative act, approved March 17, 1906, entitled: "An act to amend and re-enact chapter 23 of the Code of Virginia, in relation to the assessment of lands and lots," as the same was amended and re-enacted by chapter 388 of the Acts of the General Assembly, 1902-3-4, approved December 10, 1903, to validate assessments and other acts done under the aforesaid act of the General Assembly.

First. Had the General Assembly of Virginia the right to validate, by a subsequent statute, the assessment irregularly or without authority of law, made under the act of December 10, 1903?

As throwing light upon this question, many cases have been cited by counsel for the complainants, and the court has examined numerous cases bearing upon the point—that is to say, so many as the court could examine in the limited time allowed for an investigation of this very important and far-reaching question. No case directly in point can be found in the reported decisions of the Supreme Court of our own State.

In the case of Merchants' Bank vs. Ballou, 98 Va. 112, citing town of Danville vs. Pace, 25 Grat. 1, I gather the principle as announced by our own Court of Appeals that, so long as vested rights are not interfered with, the Legislature has the power to pass retroactive laws, but, as none of the cases of our own court are apposite, I shall not dwell upon them.

A case more analogous to the case here presented is that of Boardman vs. Beckwith, decided by Chief Justice Wright, of the Supreme Court of Iowa, in 1864, and I will add that on the bench at that time and sitting in the trial of the case was that distinguished lawyer, John F. Dillon, whose ability as a judge, lawyer and text-writer compares favorably with those of any of the eminent jurists which our country has produced. The question there involved was a question of taxation and the validity of a curative act. It was a case where property was sold by a treasurer on the first Monday in October, 1860, for the delinquent taxes of 1858, the deed being made to the purchaser on October 20, 1863.

Appellants contended that there was no law in force authorizing the levying or collection of taxes for the year 1858. Chief Justice Wright says: "On the 22d of March, 1858, a general act was passed relating to levies (Laws, 1858, Chapter 152), which took effect on July 4, 1858, and repealed all prior acts in conflict therewith. By this act, however, no provision was made for the levying and assessment of taxes for the year 1858. At the next session of the General Assembly, April 2, 1860, an act was passed to enforce the collection of delinquent taxes for the year 1858, which in its preamble, refers to the prior legislation and the omission therein, and reciting that taxes were assessed and levied in pursuance with the laws in force prior to 1858. Then follows an enactment legalizing such levies and assessments with the like effect as if chapter 152 had not been enacted, and declaring it lawful for and the duty of the proper officers to proceed to collect the taxes thus legalized, as in other cases of delinquent taxes assessed according to law.

The point here sought to be maintained was that it was not competent for the General Assembly to thus legalize the levy of 1858; that there was no other law at the time authorizing such levy and assessment and that all proceedings thereunder, notwithstanding the curative act were null, illegal and void. This act became effective May 9, 1860. Says the judge: "That it is competent to thus legislate we entertain no doubt. The power of the Legislature to pass acts of this character, conductive as they are to the general welfare, and based upon considerations of controlling public necessity, is, in our opinion, undoubted. It does not interfere with vested rights, nor impair the obligation of any contract." See 18, Iowa 292, et seq.

Iowa Cases Cited.

In 1874, in the case of the Iowa Railroad Land Company, v. Soper, 39 Iowa 112, et seq., the case above quoted from was approved, Chief Justice Miller delivering the opinion of the court. There it was held in the absence of any constitutional inhibition the Legislature has the power to pass retrospective or retroactive laws, and they should be declared inoperative only when they interfere with vested rights, and such laws as distinguished from ex post facto laws, are not unconstitutional. Taxes levied without authority of law may be rendered legal and valid by subsequent legislation.

Since the legislature has the power to pass all general laws for the levying and collection of taxes, as well as special taxes for the purpose of paying judgments without limitations as to rate, it may also legalize levies made in cases where there is a lack of lawful authority when the same are made.

Says Chief Justice Miller, in approving the case of Boardman vs. Beckwith, supra: "If it was competent for the General Assembly to pass the act above referred to, whereby the illegal and void taxes levied in 1858 were legalized and their collection authorized, it was likewise competent for the legislature to pass the act under consideration, and thereby make the taxes to pay judgments, which had been levied in excess of legal authority, valid and collectible. There is no valid argument to sustain the former, which does not apply to and sustain the latter act. In both cases it is a question of power and not one of policy. Of the power to pass the act in question we entertain no doubt. This power of the legislature to cure defective or irregular proceedings is not limited by the fact that, but for such curative act, the defective proceeding would be wholly invalid or inoperative."

Vested Rights of Tax-Payer.

Further on this learned judge says in his opinion: "But the legalizing of a tax, which but for the legalizing was invalid and not capable of being enforced, does not interfere with any vested right of the taxpayer. It is argued that before the passage of the curative act, the plaintiff had a right of action to recover back the illegal taxes paid, and that is a vested right. It is no more a vested right than in case the plaintiff had not paid the taxes. He would, in such case, have as good grounds for resisting payment, as, after payment, he could have to recover the money pany. And this is no vested right at all. Before taxes are assessed against the property of the taxpayer, in accordance with a statute for that purpose, he may lawfully claim the right to resist a claim made upon him for taxes not thus assessed. He has a right of action to enjoin the sale of his lands, or may replevy his personal property if seized for illegal taxes. But upon the regular levy of taxes in pursuance of a legislative enactment, his rights in this respect are changed. His right to resist the payment of the taxes is gone. The statute has created a liability to pay where none existed before its passage, and this is so whether the act authorizing the tax levies be passed prior thereto or is an act legalizing a tax previously levied.

"In either case the power of the General Assembly to pass the law is the same. If it has no power to legalize a tax already levied without authority, it has no power to confer the authority in the first instance. If the right to resist the payment of taxes assessed without authority of law is a vested right, which cannot be taken away by any legislative act, then the legislature has no power to tax at all, for every statute which provides for taxing the persons or property of the citizens has the effect to create liabilities where none existed before the passage of the statute. If, therefore, the prior non-liability be a vested right that cannot be impaired by legislative enactment, then there is no power in the State to levy or collect taxes. It is plain from these considerations that no vested rights are impaired by the passage of the act in question in this case."

Case Per Contra.

In commenting upon a case per contra, Chief Justice Miller said:

"The case of Hart vs. Henderson, 17 Mich., 218, holds that the legislature has power to correct any mere irregularity in the proceedings for the assessment and collection of taxes authorized by law, but when the original tax was levied without any authority of law, no subsequent legislation can make it a legal demand.

This is the only case we have been able to find (except the Kansas case above referred to) holding this doctrine, and it is in direct and palpable conflict with Boardman vs. Beckwith, supra, and other Iowa cases cited. It is also in conflict with the following cases: Winchester vs. Corina, 55; Maine 9; the State ex rel vs. Scudder, 3 Vroom 203; Bellows vs. Weeks, 41 Vt. 590; Walpole vs. Elliott, 18 Ind., 258; Thames Mfg. Co. vs. Lathrop, 7 Conn., 550."

And again in the same case, Chief Justice Miller says:

"It is further claimed that the act under consideration is an intended exercise of judicial power, and, therefore, unconstitutional and void. (Here speaking of the curative act).

"The exercise of judicial power is not within the constitutional authority of the General Assembly. That power is confined to the courts organized and established as designated in the Constitution, Art. 5, Sec. 1. When vested rights are diverested by legislative acts of this character they will be adjudged inoperative and void by the courts. Bagg's Appeal, 7 Wright (44 Pa. St.) 512. But the act under consideration does not fall within this character of legislation. The power of taxation is a necessary and indispensable incident to every government. It is 'one of the sovereign powers of the State vested in the General Assembly,' and is exercised by it without the aid of the courts, except where it calls in that aid in the collection of the revenue, Stewar vs. Board of Supervisors, etc., 30 Iowa, 9, and cases cited; Grim vs. Welsenburg School District, 57 Penn. St. 433."

Power of Legislature.

In conclusion he says: "We have seen that the General Assembly possesses the power to cure and render legal and valid by subsequent laws, defective or irregular proceedings, wherever it would have the power to authorize such proceedings in the first instance. Since, therefore, it is within the proper scope of legislative authority to pass general laws for the assessment and collection of taxes, the passage of a general law curing and legalizing the levy and collection of taxes irregularly or illegally levied, is also an exercise of legislative authority as essentially as is the passage of an original act authorizing the taxation. Such is the character of the act we are considering. It does not encroach upon the domain of judicial power, but it is clearly within the scope of legitimate legislative authority. It legalized the taxes levied to pay judgments in the various municipal corporations, which taxes were not legal and collectible prior to the passage of the act, because of a want of lawful authority to levy the same."

The opinions of Chief Justice Miller in this case, and the opinion of Chief Justice Wright, in Boardman vs. Beckwith, supra, are strong and philosophical discussions of the principle which should guide the court in arriving at a correct conclusion in the case at bar.

Relying on "Curative Act."

The curative act of March 17, 1906, the title of which has already been cited, in the third sub-section of section 447, provides that: "All assessments and all acts of every kind which have been made or done in compliance with the terms of chapter 388 of the Acts of the General Assembly, 1902, '03, '04, approved December 10, 1903, are hereby confirmed and declared to be as valid and binding as they or like assessments and acts would be, if done under this act."

Sub-section 4 provides that "An emergency existing, to protect the revenues of the State, this act shall be in force from its passage."

That it was the intention of the Legislature of Virginia, by this act, to validate all assessments or acts done in pursuance of the act of December 10, 1903 there can be no doubt but this act is also attacked as being unconstitutional and void because of section 52 of the Constitution of Virginia, which is as follows: "Section 52—No law shall embrace more than one object, which shall be expressed in its title, nor shall any law be revived or amended with reference to its title, but the act revived or the section amended shall be re-enacted and published at length."

Has Been Passed Upon.

Happily for this court and for the people of Virginia the provision of the old Constitution, which is identical in language and is found in section 15, article V, of that Constitution, has been passed upon in numerous cases by our own Supreme Court of Appeals.

In Ivorson Brown's case, 91 Va. 771, Judge Riely, delivering the opinion of the court said:

"The provision of the Constitution is a wise and wholesome one. Its purpose is apparent. It was to prevent the members of the Legislature and the people from being misled by the title of a law. It was intended to prevent the use of deceptive titles as a cover for vicious legislation, to prevent the practice of bringing together into one bill for corrupt purposes subjects diverse and dissimilar in their nature, and having no necessary connection with each other; and to prevent surprise or fraud in legislation by means of provisions in bills of which the titles give no intimation.

"And, on the other hand, it was not intended to obstruct honest legislation, or to prevent the incorporation into a single act of the entire statutory law upon one general subject. It was not designed to embarrass legislation by compelling the multiplication of laws by the passage of separate acts on a single subject. Although the act or statute authorizes many things of a diverse nature to be done, the title will be sufficient if the things authorized may be fairly regarded as in furtherance of the object expressed in the title. It is, therefore, to be liberally construed and treated, so as to uphold the law, if practicable. Cooley, Const. Lim., p. 175. All that is required by the constitutional provision is that the subjects embraced in the statute, but not specified in the title, are congruous, and have natural connection with, or are germane to, the subject expressed in the title. This has been, so far as we are aware, the construction given this provision of the constitution by this court, by the highest courts of other States whose Constitutions contain the same or a similar provision, and by the Supreme Court of the United States."

Citing numerous cases on page 772 of his opinion. See also Prison Association of Virginia vs. Ashby, 93 Va. 667; Bosang vs. Iron Belt Building and Loan Association, 96 Va. 119; Trehy vs. Marye, 100 Va. 40, and 89 Va. 878.

I shall not dwell longer upon this point. If a contrary view should be taken as to the meaning of this wise provision of the Constitution under consideration, being, as it was intended, a just provision for the prevention of fraud and surprise, it would be turned into a pitfall for the confiding or the unwary.

Other Objections.

Another objection is urged to this curative act, and that is, that, whereas by an act approved March 15, 1904, amending section 443 of the Code of Virginia, in relation to the making of the return by the assessors of three copies of their said assessment, therein provided for, in cities having a population of over 50,000, the judges of the Hustings or Corporation Courts should, in their discretion, have authority to extend the time for making the returns on the said assessments from June 1st to September 1st, in each year in which said assessments are made, and that the judge of the Hustings Court of the city of Richmond, acting in pursuance of said act by an order entered on the 28th day of June, 1905, extended the time for the making of the return on said assessments to the 1st day of September, 1905; and, it is further contended, that as this act was repealed by the curative act of March 17, 1906, which provided that said returns should be made on or before the 1st day of June, 1906, or before the 1st day of July, 1905; that, therefore, it was not the purpose of the Legislature to validate the making the extension of time allowed for the making of the assessment returns from July 1, 1905, to September 1, 1905.

As I regard the time for making the returns in any of these cases merely directory, I shall not expend any time in attempting to refute the claim of invalidity of the assessment on this ground, I cite no authority for this position because I deem it unnecessary.

But there is another objection urged to the curative act of March 17, 1906, which probably deserves more careful consideration, and that is that by section 444 of the curative act the time within which erroneous assessments of lands and lots may be corrected, by application to the Circuit Court of the county or Corporation Court of the corporation, is fixed at any time prior to the first day of February of the year next succeeding such assessment, and not after; whereas by the act approved March 15, 1904, the Legislature amended and re-enacted section 444 of the Code of Virginia, which relates to how and when assessments of lands and lots may be corrected by providing that "any person feeling himself aggrieved by the assessment of his lands or lots may, upon giving notice to the assessor or to the attorney for the Commonwealth, apply to the Circuit Court of the county or Corporation Court of the corporation in which the land lies, at any time prior to the first day of February of the second year after such assessment, and not after, to have the assessment of his lands and lots corrected," and that it was the purpose of the Legislature in passing the curative act to prevent persons aggrieved from having a judicial hearing as to the assessments of their lots, and that consequently said act of March 17, 1906, is repugnant to the fourteenth amendment to the Constitution of the United States, but it is exceedingly doubtful whether this curative act is violative of the fourteenth amendment to the Constitution of the United States or to section 11 of the Constitution of Virginia; but, conceding, for the purposes of this decision, that so much of the act as deprives the land or lot owner of this privilege is unconstitutional it by no means follows that in all other respects the act is not valid and constitutional.

For if this section of the curative act is held to be unconstitutional, then there remains in full force and effect the act approved March 15, 1904, amending and re-enacting section 444 of the Code of Virginia, and this construction is in entire harmony with what must have been the intention of the Legislature of Virginia in passing the curative act, which was to validate all assessments, etc., under act December 10, 1903, which leaves to the parties aggrieved until February 1, 1907, when read in connection with amendment of March 15, 1904, to seek redress from any real or supposed erroneous assessment of their lands or lots.

New York Case Cited.

In the Exchange Bank Tax Cases, in the case of Williams vs. Board of Supervisors of the county of Albany, it was held by Wallace, Judge, in speaking of an act which sought retrospectively to sanction proceedings in the assessment of a tax such as they could have legitimately sanctioned in advance:

"The general rule has often been declared that the legislature may validate retrospectively any proceedings which they may have authorized in advance; and it is immaterial that such legislation may operate to divest an individual of a right of action existing in his favor, or subject him to a liability which did not exist originally. In a large class of cases this is the paramount object of such legislation.

"If it was within the power of the Legislature to provide for the collection of a tax by a system which requires the taxpayers to pay in advance of an opportunity to be heard, but permits them to have a subsequent hearing and to obtain restitution, if restitution ought to be made, the validating act was constitutional.

I shall not notice the defense set up by the commissioner of the revenue, O. A. Hawkins, in his answer, that even though the act of December 10, 1903, should be void and invalid, and the assessments made by the commissioners in the city of Richmond, therefore, invalid as having been done under this act, and even though the curative act of March 17, 1906, should be void and held not to validate the assessments and acts done thereunder, yet that the said assessments would be valid under the law as it stood prior to the passage of the act of December 10, 1903, when read in connection with section 1, of the schedule of the Constitution of Virginia, which reads as follows:

"Section 1. The common law and the statue laws in force at the time this Constitution goes into effect, so far as not repugnant thereto, or repealed thereby, shall remain in force until they expire by their own limitation, or are altered or repealed by the General Assembly."

This question I leave open, as being unnecessary for me to decide, for the reasons heretofore given, which impels me to dismiss the bill of complainants in this cause and deny the relief prayed for.

Why Concession Was Made.

It will be observed that I have treated under the influence of the order entered in the case of Lambert vs. Smith, 98 Va., 258, quoted supra, the act of December 10, 1903, as invalid because violative of section 5 of the Constitution of Virginia.

It was stated in the argument of this case that the general appropriation bill passed by the Legislature on March 12, 1904, contained a provision to pay the costs of assessment of lands and lots, $75,000, or so much thereof as may be necessary, which provision is found on page 153 of the acts of General Assembly, 1904, but as to what effect, if any, this will have upon the validity of the act of March 10, 1903, I forbear to express an opinion, or to differentiate House bill No. 553 from this act, which was a bill to provide for the appointment of commissioners of valuation and defining their duties, which, by order in the case of Lambert vs. Smith, supra, was held to be invalid as appropriating public money.

I have not alluded to the contention of the complainants that the act of December 10, 1903, was void because it imposed or revived a tax and did not get the constitutional vote required, because for the sake of the argument and for the purposes of this decision under the influence of Lambert vs. Smith, 98, Virginia, I conceded the invalidity of the act—as being an appropriation of public money—for these reasons and these only do I make this concession.

There is a well recognized distinction between assessment of property for the purposes of taxation and the actual imposition or revival of a tax. An analysis of this provision in section 50 of the Constitution convinces me that the words, "imposes, continues or revives a tax," when read in connection with the next succeeding clause, "Every law imposing, continuing or reviving a tax shall specifically state such tax and no law shall be construed as to stating such tax, which requires a reference to any other law or any other tax," do not embrace laws passed for the assessment of property for the purposes of taxation, either personal or real.

I regret that I could not give a more exhaustive examination of the authorities bearing upon the interesting and far-reaching questions presented for my decision in this case. An order will be entered dismissing the bill of the complainants, and at the request of either plaintiffs or defendant, in that order, this opinion will be made a part of the record in this case.

SPLENDID PICTURE OF GENERAL LEE FROM PHOTOGRAPH TAKEN IN RICHMOND

The picture of General Lee, which appears above is a photoengraving of an etched portrait of about three-quarter life size, made by the John A. Lowell Bank Note Company, of Boston, Mass. It is one of a series of portraits of great men of our country, and we do not believe that the artist will ever make a better.

By a correct inspiration Mr. Lowell, when he determined to make a picture of General Lee, selected for the model a photograph taken of General Lee at No. 707 East Franklin Street, Richmond, now the Virginia Historical Society, a few days after his return from Appomattox. Mr. Lowell had great trouble in finding this particular picture, and finally located it in Philadelphia. He was encouraged in his work by General Fitzhugh Lee, who the very day he left Boston and was stricken down on his train with what proved to be his death stroke, promised Mr. Lowell that he would return to Boston in two weeks and see the final design they were at work upon.

The great labor of etching this portrait has been crowned with triumphant success. It is really an inspiration to see the picture, and it would be for the promotion of all that is noble in man to have such a portrait of such a man in every family in the land.

THE METHODISTS IN CONFERENCE

Bishop Alpheus W. Wilson Delivers a Farewell Address at Opening.

THE EDUCATION REPORT

Feature of Meeting Adoption of Report for Representative Church in Washington.

(By Associated Press.)

CUMBERLAND, MD., March 31.—At the opening of to-day's session of the Baltimore Conference of the Methodist Episcopal Church, South, Bishop Alpheus W. Wilson delivered a farewell address.

The feature of the morning's session was the adoption of the report of the committee on memorials to the general conference that a representative church be built in Washington.

The report of the board of education was in part as follows:

Value of property, $678,463.85; endowment, $311,927.90; total $990,391.85; professors and instructors, 81; students, 925.

Randolph-Macon College, at Ashland, has a new dormitory, costing $35,000, built through the generosity of John P. Branch, of Richmond, Va. Mrs. Shea, of Norfolk, Va., has devised an estate estimated at $65,000 to $100,000 to the board of trustees for the education of young men to the ministry. Randolph-Macon Academy, of Front Royal, Va., 135 students. The academy at Bedford City, Va., has 180 students, and paid off $10,000 of the indebtedness last year.

The Woman's College, at Lynchburg, will soon have a property worth $500,000 and an enrollment of 500 students, with 50 instructors and an annual income of $150,000.

Professor J. A. Bray, colored, president of Lane College, Jackson, Tenn., who was introduced, spoke for education among the young negroes. Bishop Candler endorsed his work, and headed a subscription, which grew into large proportions.

Shorter to Atlanta.

(Special to The Times-Dispatch.)

ASHEVILLE, N. C., March 31.—The Southern Railway is about to begin the construction of a short line between Rosman (on the Transylvania Railroad) and Seneca, S. C., on the main line of the Southern from Washington to Atlanta. Yesterday an engineering corps left this city for Rosman for the purpose of beginning an immediate survey. The construction of this line has been under consideration by the Southern Railway for some time, and the order for the survey is the first step towards construction. The reduction in distance between Asheville and Atlanta via this new route will be between forty and fifty miles.

Mrs Thalhimer Goes to New York

Mrs. Jacob Thalhimer left for New York, her new home, Wednesday evening, and regretted not being able to see all her friends to bid them farewell, and takes this means of doing so.

BREWING COMPANY MAKES ASSIGNMENT

(Special to The Times-Dispatch.)

NEWPORT NEWS, VA., March 31.—The Old Dominion Brewing and Ice Company to-day made an assignment, a deed being filed in the Warwick County Court turning over all the company's property to J. A. Massie, trustee.

The company's plant and property represent an invested capital of over five hundred thousand dollars. The assets amount to about two hundred and fifty thousand, two-thirds of which represents outstanding bonds. The plant and Norfolk and Richmond branches will be operated by the trustee until teh company can be reorganized and put on a better financial basis.

Most of the stock in the concern is owned by Pennsylvania capitalists.

United States commissioner A. C. Garrett to-day dismissed the warrants against F. Dennig and M. Schimkowitz, charged with receiving sailors' uniforms. The pawnbrokers agreed to give up the clothing in order to have the proceedings dismissed.